No. 2871

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

WOO HOO, on Behalf of WOO DAN,

Appellant,

vs.

EDWARD WHITE, as Commissioner of Immigration at the Port of San Francisco,

Appellee.

BRIEF OF APPELLEE

Upon Appeal from the Southern Division of the United States District Court for the Northern District of California, First Division

---

JOHN W. PRESTON,
United States Attorney,

CASPER A. ORNBAUN,
Asst. United States Attorney,

Attorneys for Appellee.

Filed this.....day of March, 1917.

FRANK D. MONCKTON, Clerk.

By....., Deputy Clerk.

No. 2871.

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

WOO HOO, on Behalf of WOO DAN,

Appellant,

vs.

EDWARD WHITE, as Commissioner of Immigration at the Port of San Francisco,

Appellee.

BRIEF OF APPELLEE

STATEMENT OF THE CASE.

The appellant, Woo Dan, arrived at the Port of San Francisco on the Steamship "Chiyo Maru" on December 6, 1915, and applied for admission to the United States as the minor son of a domiciled merchant. After due consideration was given to the evidence introduced by appellant, he was ordered excluded by the Secretary of Labor for the reason that said appellant failed to establish his alleged relationship. A petition for a writ of habeas corpus was filed on behalf of appellant and the Government interposed a demurrer to said petition stating, first: that the said petition does not state

facts sufficient to entitle petitioner to the issuance of a writ of habeas corpus, or for any relief thereunder, and second: that the said petition is insufficient in that the statements therein relative to the record of the testimony taken on the trial of said appellant are conclusions of law and not statements of the ultimate facts. Upon the hearing of said demurrer said demurrer was sustained and the petition for a writ of habeas corpus denied.

ARGUMENT.

With reference to the first point dwelt upon by counsel for appellant, the Government desires to call attention to the fact that in this, as in all of the other Immigration cases, at the time of the argument of the demurrer to the petition for a writ of habeas corpus, the original record of the Bureau of Immigration is filed by the Government and made a part of the petition for a writ of habeas corpus and is considered part of said petition upon the hearing of the demurrer. This was done in the present case and it will be noted on page 4, paragraph number 2 of counsel's brief this fact is admitted. The lower Court then, in ruling upon the Government's demurrer, not only took into consideration the bare petition filed by appellant, but also considered the original record of the Bureau of Immigration, which is on file herein and marked respondent's "Exhibit B". This disposes of the first point made by counsel for appellant, namely:

that in as much as the bare statements in his petition are sufficient to justify the issuing of a writ of habeas corpus, the lower Court erred in sustaining the Government's demurrer, but leaving this point temporarily, the Government desires to call attention to the fact that even though the original record of immigration had not been attached to the petition for a writ of habeas corpus, the lower Court would have been entirely justified in sustaining the Government's demurrer to said petition, for without the evidence and other proceedings which were contianed in said original record of the Bureau of Immigration, said petition would not have stated sufficient facts to have justified the issuing of a writ.

There is but one other question to be determined in this case and that is whether or not the proceedings of the Bureau of Immigration and the Secretary of Labor were manifestly unfair, or were such as to prevent a fair investigation, or whether said proceedings taken amounted to a manifest abuse of discretion.

Low Wah Suey vs. *Backus,* 225 U. S. 460,

U. S. vs. *Ju Toy,* 198 U. S. 253; 49 L. Ed. 1040,

Chin You vs. *U. S.* 208 U. S. 852,

Tang Tun vs. *Edsell,* 223 U. S. 673,

and in order to determine this question, it is necessary to make an investigation of the evidence which

was considered by the Immigration officials in arriving at the conclusion that said appellant failed to show the relationship claimed by him.

The Government calls attention to the report of the medical examiner found on page 44 of the original record of the Bureau of Immigration on file herein and marked "Exhibit B", which reads as follows:

"December 21, 1915.

MEMORANDUM FOR THE COMMISSIONER.

In the case of Woo Dan, 1481/9-20, ex SS "Chiyo Maru", 12/6/15, in which you request an expression of opinion as to his probable age, I beg to state that after an examination and a careful consideration of the physical characteristics presented by the alien, I am of the opinion that his age is within one year either way of 23 years.

Respectfully,

(Signed) W. C. BILLINGS,
Surgeon, U. S. P. H. S.

(Signed) J. P. HICKEY,
A. A. Surgeon, U. S. P. H. S."

See also report of Inspector Lorenzen on page 63 of said record, which reads as follows:

"Jan. 20, 1916.

MEMORANDUM FOR THE COMMISSIONER.

In re WOO DAN, son of merchant, ex ss "Chiyo Maru" December 6, 1915.

A review of this case reveals the following affecting the relationship feature:

The alleged father has not been to China since about October 1895, and as applicant is claimed to have been born March 11, 1896, the former has never seen the latter, and can therefore not from personal knowledge identify applicant as his son. The testimony relative to the alleged visit of the identifying witness at applicant's home in 1909 does not have a genuine ring, and said witness also appears to be discredited by reason of his connection, as alleged father, with two applicants for admission, Woo Sick Ngow, No. 5951, and Woo Sick Pon, No. 253, ex ss "Korea" May 27, 1910, who were denied and deported. These conditions leave the case without any competent evidence to establish applicant's identity as the son of alleged father.

Not only has applicant failed to produce sufficient evidence to identify himself as the son of alleged father, but there are strong indications that such relationship does not exist. It does not seem reasonable that a Chinese would permit twenty years to pass without taking a trip to China to see his first born and only

son, whom he had never seen, yet that is the condition we are asked to believe in this instance.

There are also indications that this applicant is not a minor. The examining inspector believes him to be one of the two boys who applied for and were denied admission as the sons of the present identifying witness in 1910, and I must say that there is quite a general resemblance between them. Said boy, Woo Sick Ngon, would now be about twenty-two or twenty-three years of age, and that agrees with the estimated age given by the medical examiner of aliens for the present applicant. Applicant also claims to be married and be the father of a boy, by reason of which he has established a household of his own, and could not well claim to be a dependent member of alleged father's household.

In view of the foregoing applicant has not established that he is the dependent minor son of alleged father, and I accordingly concur in the recommendation of denial by the examining inspector.

(Signed) LAURITZ LORENZEN,
Immigrant Inspector."

Also a memorandum for the use of the Secretary of Labor found on page 116 of said record, which reads as follows:

"April 1, 1916.

In re WOO DAN, aged 20.

MEMORANDUM FOR THE SECRETARY.

1. Reason claimed as ground of admission: That the applicant is the minor son of a domiciled merchant.

2. Reason for exclusion at the port: That he has failed to establish the alleged relationship.

3. Issue:

   Relationship.

4. Substance of record in support of admission:

   Conceded mercantile status of the alleged father and verification of the visit he took to China which would permit of his parentage of the applicant.

5. Substance of record opposed to admission: Minor discrepancies in the record; age of applicant; and fact he is married.

The applicant, Woo Dan, is applying for admission at San Francisco as the alleged minor son of Woo Ho, an alleged merchant of the firm of Gung On & Co., 863 Clay St., San Francisco. The lawful residence and mercantile status of the father are conceded and his visit to China at a time which would permit of his paternity to applicant, who is claimed to be 20 years of age, has been verified. The applicant was re-

jected by the Commissioner at San Francisco apparently for the reasons set forth in the reports of Inspector Scully (49-50), and Inspector Lorenzen (62-63).

Inspector Scully points out that the alleged father testified (13) that there was only one ancestral hall, located in the 4th row, in the Wo Hing village, while the applicant testified (30) that there are two ancestral halls and that the one mentioned by the alleged father is in the second row; that the identifying witness, Woo Wee Gin, testified (9) that he visited the applicant's home in the Wo Hing village, that applicant's home was located in the 2nd row, 4th house, while the applicant testified (27) that he lives in the 3rd row, 4th house, and that he saw the witness at that location; that the alleged father testified (12) that he owned no other property in the village besides the two houses mentioned, while the applicant testified (28) that his father was also the owner of a piece of land in front of the village used for vegetable raising; that notwithstanding the fact that the applicant testified he never had a brother, there was found in his trunk a Chinese letter or bill (translation of which appears on page 45) written by someone in Vancouver and addressed to a brother, Woo Dock Wo; that a strong family resemblance was noted between the identifying witness and applicant and a photograph of an alleged son of the former, who was rejected at San Francisco in May, 1910 (exhibit "A"); and that the medical examiner of aliens had furnished a certificate to the effect that the age of applicant was within one year either way of 23.

Inspector Lorenzen (63) refers to the fact that the alleged father has never before seen the applicant, the latter having been born several months after he (alleged father) returned to this country; that the identifying witness was discredited in that he had previously appeared before that office as the alleged father in the case of two Chinese boys who were denied admission and deported and other cases (see exhibits) notwithstanding the fact that he testified he had never before been a witness; that the medical examiner had estimated applicant's age as being within one year, either way, of 23; that there was a strong resemblance between the applicant and the photograph of Woo Sick Ngow, the alleged son of the identifying witness (referred to by Inspector Scully), deported in 1910, who at this time would be about 22 or 23 years of age; and that the applicant was married and the father of an infant son.

On appeal as additional witness named Woo Mun has been introduced. His statement (84-86) is to the effect that he visited applicant's home in China in the fifth month, last year, where he saw applicant, the said visit having been made at the suggestion of the alleged father with whom he was acquainted in this country. This witness returned from China on December 27th and was permitted to land the following day, but claims that during the short period he was at Angel Island he did not see applicant. He is corroborated in this respect by the applicant and there is no reason to disbelieve their statements.

Aside from the discrepancies above outlined and the lack of identification, the Bureau recommends a dismissal of the appeal upon the following ground, to-wit:

Applicant is admittedly 20 years of age at the present time (according to American reckoning) his testimony and that of his alleged father being to the effect that he was born K. S. 22-1-18 (March 11, 1896), or five (5) months after the departure of the alleged father for the United States. The medical examiner at San Francisco expresses the opinion that applicant is within one year, either way, or 23 years of age, and the Bureau feels that this is particularly significant for the reason that if applicant is five (5) months older than the age he claims, it would preclude the alleged father, by reason of his return to the United States in October, 1896, from being the father of the applicant. On the other hand, conceding that applicant is the age claimed, he is at most only technically a minor, having for all intents and purposes attained his manhood; married and the father of a child. Certainly a case of this character cannot be held to come within the decision of the Supreme Court in the Mrs. Gue Lim case. In the latter case the child was under 15 years of age, admittedly dependent upon and entitled to the care and protection of the parents.

Several attacks have been made upon the investigating officers and the manner in which this case was handled by the San Francisco office, by the attorneys appearing in behalf of the applicant and the local Chinese Consul. Un-

fortunately the contentions of the attorneys were correct by reason of certain technical mistakes or oversights on the part of the examining inspector wherein reference was made to the fact that a certain Chinese letter was taken from inside the trunk of applicant while as a matter of fact it was found under the covering of the trunk; and reference to the length of time the additional witness, Woo Mun was detained at the station. The Inspector was under the impression that he arrived December 6th and was detained until December 28th, while the records show he arrived December 27th, and was released the following day.

The criticisms of the Chinese Consul-General, however, are in the Bureau's opinion, unwarranted and uncalled for, for the reason that an inspection of the record does not bear out his statements to the effect that the examining officers were endeavoring by means of trickery or other unfair methods to lay a basis for the exclusion of the applicant, but on the contrary shows that the entire investigation was conducted fairly and that the officers were only endeavoring to get at the truth.

It is recommended that the appeal be *dismissed.*

Assistant Commissioner-General."

See also the decision of the Secretary of Labor commencing on page 117 of said original record of the Bureau of Immigration but which ends on page 113 of the same record, as follows:

"May 6, 1916.

In re WOO DAN.

MEMORANDUM FOR THE SECRETARY:

This case was carefully reviewed by the Bureau in a memorandum dated April 1st, attached immediately hereunder. Since the preparation of that memorandum the record has been thrown open in its entirety to the attorney representing the applicant before the Bureau, the attorney has submitted a detailed brief, and has also been accorded an opportunity to argue the case orally. On the basis of the brief and argument the record has been re-examined and all of the contentions advanced in behalf of the applicant carefully considered.

The Bureau does not find itself, however, able to reach any other conclusion than that this applicant should be deported. There is considerable doubt that he is a minor; he is more likely 22 to 24 years of age than 20 as claimed. At any rate he is in no substantial sense the minor son of a merchant, even if it should be conceded (as it is not) that the evidence is sufficient to show affirmatively that his claim of relationship to the alleged father is true. It is not claimed with respect to him that he is less than 20 and he is married and the responsible head of a family; so that his landing could be justified, even if the evidence of relationship were clear and satisfactory, only by observing form and ignoring substance upon this proposition of

minor children joining their parents here and by arbitrarily fixing upon the American age of majority as the age which is to be the dividing line in such a Chinese case.

The case has excited considerable comment and some criticism. It is one of those included in a list recently submitted by a representative of the San Francisco Chamber of Commerce. The Chinese Consul General at San Francisco has also made it the basis of severe strictures upon the examining officers and of criticism of the manner in which this Bureau conducts its official duties. These things are mentioned, not because they influence the Bureau in one way or another, but simply as interesting facts that are worthy of notice, if not of detailed comment. The case must of course be decided upon the record without regard to what some one who has a second or third-hand interest or knowledge in the matter may think of it.

It is encumbent upon every Chinese who attempts to enter this country to establish his claim of right to enter. Looking at the case simply upon the basis of this question 'Has the applicant affirmatively proven that he is the minor son of a domiciled merchant?' the Bureau is obliged to reach the conclusion that he has not. In other words, looking at the case in a reasonable and logical way and permitting each item of the evidence to produce its natural effect upon the mind, the Bureau does not find itself satisfied that the applicant is the minor son of a merchant. It must there-

fore, in pursuance of the requirement of the law to that effect, recommend that the decision of the Commissioner at San Francisco be AFFIRMED.

(Signed) A. CAMINETTI,
Commissioner-General."

It will be noted that the memorandum to which the Court's attention has been directed contains refences to pages. These references refer to pages of the original record of the Bureau of Immigration, and an examination of them will show that on the pages referred to, the testimony will support the said memorandum. A careful investigation of said record shows conclusively that the appellant in this case was shown every consideration by the Immigration officials and counsel fails to point out a single instance in his brief where unfairness was shown on the part of the Immigration officials. In fact, the cases to which attention has been directed in counsel's brief do not set forth anything new.

In *ex parte Lee Dung Moo,* 230 Fed. 746-747 and *ex parte Tom Toy Tin,* 230 Fed. 747, the question involved in both of these cases was with reference to the entrance into the United States of a citizen: in other words, a Chinese, born in China, with parents in the United States who are citizens of the United States. The question determined in both of those cases was to the effect that the Immigration officials had no right to go beyond the Acts of

Congress and if the fact were established that the father of the applicant was a citizen, the applicant had a right to enter the United States, even though he were upwards of the age of twenty-one. This, no doubt is the law, but in the present case the question is entirely a different one. Here the Immigration officials were determining whether or not the relationship of father and son existed between the appellant and appellant's alleged father, and furthermore, whether or not said appellant was the *minor son* of his alleged father, who was a merchant and doing business in the United States.

From the very nature of the investigation, the hearings conducted by the Immigration officials must be of a summary character.

Chin Yow vs. *U. S.* 208 U. S. 8,

Sibray vs. *U. S.,* 227 Fed. 1,

and not subject to the formalities of procedure and rules governing the admissibility of evidence.

Ex parte Garcia, 205 Fed. 53,

Fong Yue Tung vs. *U. S.,* 149 U. S. 698,

U. S. vs. *Hong Chang,* 134 Fed. 19,

Jew Yuen Case, 188 Fed. 350,

Choy Gum vs. *Backus,* 223 Fed. 487,

Siniscalchi vs. *Thomas,* 195 Fed. 701,

Jeung Bow vs. *U. S.,* 228 Fed. 868,

and the findings of the Secretary of Labor are final and conclusive.

Ekiu vs. *U. S.,* 142 U. S. 651,

Lee Lung vs. *Patterson,* 186 U. S. 170,

The Japanese Immigrant case, 189 U. S., page 86,

Tang Tun vs. *Edsell,* 223 U. S. 673,

Low Wah Suey vs. *Backus,* 225 U. S. 460,

U. S. vs. *Ju Toy,* 198 U. S. 253,

Zakonaite vs. *Wolf,* 226 U. S. 272,

Chin You vs. *U. S.,* 208 U. S. 8,

Healy vs. *Backus,* 221 Fed. 358.

In *Lee Lung* vs. *Patterson,* supra, the Court said:

> "It was decided in the Nishimura Ekiu's case that Congress might intrust to an executive officer the final determination of the facts upon which an alien's right to land in the United States was made to depend, and that if it did so, his order was due process of law, and no other tribunal, unless expressly authorized by law to do so, was at liberty to reexamine the evidence on which he acted or to controvert its sufficiency. This doctrine was affirmed in *Lem Moon Sing* vs. *U. S.,* 158 U. S. 538, 39 L. Ed. 1082; 15 Sup. Ct. Rep. 967 and at the present term in *Fok Young Yo* vs. *U. S.,* 185 U. S. 306."

In *Low Wah Suey* vs. *Backus,* the Court said:

> "A series of decisions in this court has settled that such hearings before executive officers may be made conclusive when fairly conducted. In order to successfully attack by judicial proceedings the conclusions and orders made upon such hearings, it must be shown that the proceedings were manifestly unfair; that the action of the executive officers was such as to prevent a fair investigation, or that there was a manifest abuse of the discretion committed to them by the statute. In other cases the order of the executive officers within the authority of the statute is final. *U. S.* vs. *Ju Toy,* 198 U. S. 253; *Chin Yow* vs. *U. S.,* 208 U. S. 8, *Tang Tun* vs. *Edsell,* 223 U. S. 673."

The Court will not inquire into the sufficiency of the probative facts or consider the reasons for the conclusions reached by the Immigration officials.

Healy vs. *Backus,* 221 Fed. 358, 365,

White vs. *Gregory,* 213 Fed. 768,

Lee Lung vs. *Patterson,* 186 U. S. 170.

In conclusion the Government desires to call attention to the fact that every act on the part of the Immigration officials, as shown by the said original record of the Bureau of Immigration on file herein, shows that every consideration was given to said appellant, and for this reason their action

should be upheld by this Court and the judgment of the lower Court sustained.

Respectfully submitted,

JOHN W. PRESTON,
United States Attorney,

CASPER A. ORNBAUM,
Asst. U. S. Attorney.

Attorneys for Appellee.